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## The Theoric Fund, the Athenian finance in the 330s, and Apollodorus

### *Abstract*

This article examines the history and role of the Theoric Fund in Athens, focusing on evidence and arguments in the long-running debate about whether a legal prohibition existed against channeling the surplus budget money designated for the Theoric Fund to military purposes. The argument here is that Libanius' reference to this prohibition as being enforced by the death penalty for at least some time in the 340s cannot simply be rejected by adducing the evidence about either the proposal to have a public vote on diverting this money for military purposes, as was moved by Apollodorus in the early 340s, or the way in which the Theoric Fund operated in the 330s and 320s.

Quite a lot has been written about the Theoric Fund, whose main declared purpose was to distribute money for public entertainment to qualified Athenians, primarily for two reasons: the contested dating of its establishment, and the uncertainty about whether there existed a prohibition on diverting its money for other purposes. The foundation of the Theoric Fund is variously attributed to Pericles, to Agyrrhius in the early fourth century, or, according to the majority opinion, to Diophantus and Eubulus in the mid-350s.<sup>1</sup> Pinpointing the exact date of its establishment might not be as important as some think, since it is likely that the Fund, and the very idea of financing public entertainment, evolved over time, paralleling the progress of Athenian democracy, which is

<sup>1</sup> Pericles: Schol. Dem. 1.1 ([1f] Dilts, 16) and Schol. Aeschin. 3.24 (Dilts, 109-110); for earlier bibliography, see Rhodes 1981, 514 ("but there is no contemporary evidence to support a fifth-century date"). Agyrrhius: Harp. Θ 19; Buchanan 1962, 48-60; Hansen 1976b, 236 (see next note). The mid-350s: see Aeschin. 3.25-26 (see below), with e.g., Cawkwell 1963, 55-58 (and n. 53 with earlier bibliography) [repr. in Cawkwell 2011, 334-368]; Ruschenbusch 1979, 303-308 (and nn. 2-6 with earlier bibliography); Rhodes, *loc.cit.*; Brun 1983, 170 (but see next note); Sealey 1993, 256, 258; Rhodes 1994, 569; Kawalko Roselli 2009, 5; Cawkwell 2012a, 543; Worthington 2013, 90; Rhodes 2013, 219; Csapo and Wilson 2014, 394 (and n. 7 for bibliography); Pritchard 2015, 15, 124 n. 91.

generally acknowledged to have developed in stages.<sup>2</sup> This might explain why both classical Athenian democracy and the Theoric Fund came to an end at about the same time: the last attested references to the Theoric Fund belong to the 320s (Buchanan 1962, 81-82). It is the question of whether diverting the Fund's money for purposes other than providing entertainment or distributing largess to qualified Athenians was prohibited that has attracted the most attention. This seemingly small issue is closely connected with the bigger topics of the Theoric Fund's relationship with the Military Fund, its place in Athens' overall financial administration, and its role in Athenian democracy.

Speeches from the mid-fourth century provide most of the relevant evidence. This was the time when Athens, challenged by the growing expansion of the Macedonian kingdom ruled by Philip II, needed more and more money for military use. Demosthenes' *First Olynthiac* (349) is thought to have made a cautious suggestion to divert money designated for the Theoric Fund to military purposes:

You have more than any other nation has for military purposes. But you appropriate it yourselves to suit your own pleasure. Now if you spend it on the campaign, you will have no need of a further supply (οὐδενὸς ὑμῖν προσδεῖ πόρου). If not, you will need, or rather you will totally lack, the supply. "So, then," someone will say, "do you propose that this money be used for military purposes?" By Zeus, I do not. Only it is my opinion that we must provide soldiers and that there must be one uniform system of pay in return for service. Your opinion, however, is that you should, without any trouble, just appropriate the money for your festivals (εἰς τὰς ἑορτάς). Then the only alternative, I believe, is a war-tax (ἔστι δὴ λοιπὸν, οἶμαι, πάντας εἰσφέρειν), heavy, if the need is great, or light, if small. Only money we must have, and without money nothing can be done that ought to be done. And others are proposing some other supplies (λέγουσι δὲ καὶ ἄλλους τινὰς ἄλλοι πόρους); choose whichever of them you think expedient, and, while there is yet time, grapple with the problem.<sup>3</sup>

Later in 349, Demosthenes' *Third Olynthiac* (3.31 and 33) expressed the same idea in a different fashion, referring to this money as budget surplus money:

2 This makes up a part of the well-known debate about whether classical Athenian democracy was established in a one-time event by Cleisthenes' reform in the late sixth century, or matured over several decades by the mid-fifth century: e.g., Farrar 2007, 171-172; Raaflaub 2013, 337; Hall 2014, 256. Cf. Schol. Aeschin. 3.24 (Dilts, 109-110), with Buchanan 1962, 29-34, 48-60, who examined the Theoric Fund as a development, and Kawalko Roselli 2009, 5-30, who argued that the distribution of public funds for attendance at festivals existed as *ad hoc* payments in Athens in the fifth century. For the view that "the Theoric Fund was possibly founded by Agyrrius in the beginning of the fourth century, but it did not gain in importance until the period when Eubulus was at the head of the Athenian financial administration," see Hansen 1976b, 236 (the quote); Leppin 1995, 558; and Kapparis 1999, 176-177. Cf. Brun 1983, 170: "c'est avec Eubule que le *théorikon* prend toute sa signification."

3 Dem. 1.19-20. This interpretation: Cawkwell 1963, 58; Worthington 2008, 75; MacDowell 2009, 233. See Harris 2006, 121-123 (originally published as Harris 1996, 57-76).

Deprived of money and allies, you find yourselves in the position of a servant and a dependent, content if these men give you from your theoric money (ἀγαπῶντες ἐὰν μεταδιδῶσι θεωρικῶν ὑμῖν) or dispatch the procession at the Boedromia, and, bravest of all, you even thank them for your own possessions! ... If then, even now, you abandon these habits and are willing to go on campaign and to act in a way that is worthy of yourselves, and to use these abundant domestic surplus money for the attainment of advantages abroad (καὶ ταῖς περιουσίαις ταῖς οἴκοι ταύταις ἀφορμαῖς ἐπὶ τὰ ἔξω τῶν ἀγαθῶν χρῆσθαι), perhaps, men of Athens, perhaps you may acquire some great and lasting benefit and rid yourself of these paltry perquisites ... “Do you mean military pay?” someone will ask. Yes I do, and I mean the same system for everyone, men of Athens, in order that each man, in taking his share of the public funds, should play whatever role the city requires.

Shortly thereafter, Apollodorus made a similar proposal in the form of a *probouleuma* – or a motion drafted in the Council and brought before the Assembly for consideration, without being accompanied by any recommendation – according to his brother-in-law, Theomnestus. While introducing Apollodorus’ speech against Neaera in the late 340s, Theomnestus made a retrospective reference:

Apollodorus, being one of its members [i.e., of the City Council], brought forward in the Council a decree, and carried it as a motion to the Assembly (καὶ ἐξήνεγκε προβούλευμα εἰς τὸν δῆμον), proposing that the people should make a vote (διαχειροτονῆσαι τὸν δῆμον) about whether the surplus money from the state’s expenditure (τὰ περιόντα χρήματα τῆς διοικήσεως) should be used for military purposes or for public spectacles. For the laws allow that, when there was war, the funds remaining over from state expenditures are devoted to military purposes, and Apollodorus believed that the People ought to have power to do what they pleased with their own (κελευόντων μὲν τῶν νόμων, ὅταν πόλεμος ᾖ, τὰ περιόντα χρήματα τῆς διοικήσεως στρατιωτικὰ εἶναι, κύριον δ’ ἡγοῦμενος δεῖν τὸν δῆμον εἶναι περὶ τῶν αὐτοῦ ὃ τι ἂν βούληται πράξαι). And he had sworn that, as a member of the Council, he would act in the best interests of the Athenian people, as you all bore witness at that crisis. For when the vote took place there was not a man whose vote opposed the use of this money for military purposes; and even now, if the matter is anywhere spoken of, it is acknowledged by all that Apollodorus gave the best advice, and was unjustly treated. It is, therefore, upon the one who by his arguments deceived the jurors that your wrath should fall, not upon those who were deceived.

This has been understood as Apollodorus’ proposal to transfer surplus money to the Military Fund rather than the Theoric Fund.<sup>4</sup> Edward M. Harris’

4 [Dem.] 59.4-5. For this interpretation, see Cawkwell 1963, 58; Yunis 1988, 374 (349-348 B.C.); Carlier 1990, 128; Worthington 2013, 130; cf. Migeotte 2014, 447; *pace* Hansen 1976b, 242-243 (see n. 13 below). Apollodorus’ proposal has been dated to 348, which is

study of the Theoric Fund has noted that the law permitted, but did not oblige, Athenians to use the surplus from the budget for military purposes in times of war. This required a vote of the People, which is what Apollodorus proposed.<sup>5</sup> Some have already observed that Apollodorus did not move to transfer the surplus money to the Military Fund but to have a vote about whether this should be done.<sup>6</sup> Although the Council and the Assembly approved the proposal, according to Theomnestus ([Dem.] 59.5-6), it was then blocked by Stephanus, who prosecuted Apollodorus on the charge of having made an illegal proposal (*graphe paranomon*). Stephanus succeeded in having Apollodorus convicted and fined.

### 1. Apollodorus' proposal and the evidence of Libanius

The outcome of Apollodorus' proposal is thought to have contradicted Libanius' words that anyone who proposed to convert the money of the Theoric Fund to military purposes was to be punished by death according to the law of Athens.<sup>7</sup> Some have accepted Libanius' information about the prohibition on converting the money of the Theoric Fund as carrying the death penalty: Athenian laws could be protected by death penalty clauses.<sup>8</sup> Others have had reservations about this evidence because, even if they accepted that this prohibition existed, Apollodorus was only punished with a fine.<sup>9</sup> Still others have believed that the need to reconcile the evidence from Libanius with the words of Theomnestus required a later scholiast to assert that Eubulus did not move to establish the death penalty for diverting money intended for the Theoric Fund

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immediately after Demosthenes' *Olynthiacs*: Cloché 1937, 85-86; Trevett 1992, 138; Leppin 1995, 564; Harris 2006, 123, 129 (349-348 B.C.). Cf. the dating of Apollodorus' trial to the spring of 348 (Hansen 1976b, 235) or 349-348: Hansen 1974, 34, no. 18.

5 [Dem.] 59.4-5, with Harris 2006, 131 and the next note.

6 Cloché 1937, 86; Trevett 1992, 144; Harris 2006, 131: "since the Assembly was permitted to do this, Apollodorus passed a *probouleuma* in the Council instructing the Assembly to vote on the question."

7 Liban. *Hypoth. Dem.* 1.7: διεύλεκται δὲ καὶ περὶ τῶν δημοσίων χρημάτων συμβουλευόντων αὐτὰ ποιῆσαι στρατιωτικὰ ἀντὶ θεωρικῶν. Καὶ τὸ ἔθος οὐ πρόδηλον ὃν ᾧ ἐχρῶντο οἱ Ἀθηναῖοι, ἀνάγκη σαφηνίσαι, and 1.10: καὶ νόμον ἔθεντο περὶ τῶν θεωρικῶν τούτων χρημάτων θάνατον ἀπειλοῦντα τῷ γράψαντι μετατεθῆναι ταῦτα εἰς τὴν ἀρχαίαν τάξιν καὶ γενέσθαι στρατιωτικά, in Foerster 1915, 609 and 610, respectively.

8 E.g., Hansen 1976b, 236-237 (with n. 10), with Trevett 1992, 144-145; Carlier 1990, 129, who ascribed Apollodorus' relatively mild punishment to "indulgent judges." For laws being protected by death penalty clauses, see Hansen 1976b, 236-237 n. 10, with Trevett 1992, 142 n. 60.

9 E.g., Buchanan 1962, 62 n. 2; Carey 1992, 152; Sealey 1993, 257; Leppin 1995, 564 ("nicht glaubhaft"); MacDowell 2009, 234: "it is clear enough that there was a law obstructing the transfer of money from the theoric to the military fund, which therefore could not be proposed until the law was repealed"; Worthington 2013, 136, 141.

until after Apollodorus had made his proposal.<sup>10</sup> Regardless of whether this was the actual concern of the scholiast, his comment fits neither the cautious stance Demosthenes took in 349, which Libanius and modern authors explained as Demosthenes' fear of being prosecuted,<sup>11</sup> nor the logic of the situation in the early 340s: how could the Assembly, which had just supported Apollodorus' proposal, then turn around and vote to execute anyone who proposed a similar measure in the future? It is not unreasonable to suggest that even if Eubulus had indeed made this motion at that moment, he was only reinforcing a prohibition that was already in place.<sup>12</sup> However, this still does not reconcile the words of Theomnestus with the information from Libanius.

Hansen, who also saw the scholiast's words as an attempt to explain why Apollodorus was only punished with a fine, suggested that there was no contradiction between what Libanius and Theomnestus described because the Theoric Fund was made up of two parts: an annual allocation and the surplus money. Since the law mentioned by Libanius only concerned the former while Apollodorus' proposal, as described by Theomnestus, only concerned the latter, Apollodorus' punishment was not death but a fine.<sup>13</sup> However, if the prohibition was only concerned with the annual allocation, why was Apollodorus punished in the first place? While the language of Demosthenes' *First Olynthiac* was very general, his *Third Olynthiac* referred to the proposed use of the "abundant surplus money," the same source referred to in Apollodorus' proposal.<sup>14</sup> Nothing in this evidence suggests that such proposals targeted the regular annual allocation (*merismos*) or appropriation. Both Demosthenes (indirectly) and Apollodorus (in a more straightforward fashion) proposed what amounted to diverting surplus money designated for the Theoric Fund to military purposes,

10 Schol. Dem. 1.1: εἴτα ἐπιχειρήσαντος Ἀπολλοδώρου τινὸς πάλιν αὐτὰ ποιῆσαι στρατιωτικά, βουλόμενος Εὐβούλος ὁ πολιτευόμενος δημαγωγὸς ὧν πλείονα εὖνοιαν ἐπισπάσασθαι τοῦ δήμου πρὸς ἑαυτὸν, ἔγραψε νόμον τὸν κελεύοντα θανάτῳ ζημιουῖσθαι εἰ τις ἐπιχειροίη μεταποιεῖν τὰ θεωρικὰ στρατιωτικά ([1f] Dilts, 1: 16) and 1.19 ([128a] Dilts, 1: 40). Hansen 1976b, 239 (and n. 15 with bibliography); Carey 1992, 154. The use of μετα- indicated a transfer of money; see also Liban. *Hypoth. Dem.* 1.10 (see n. 7 above).

11 Liban. *Hypoth. Dem.* 1.11: διὸ ὁ Δημοσθένης εὐλαβῶς ἄπτεται τῆς περὶ τούτου συμβουλῆς καὶ ὑπερωτήσας ἑαυτὸν ὅτι σὺ γράφεις ταῦτα εἶναι στρατιωτικά; ἐπιφέρει μὰ Δί', οὐκ ἔγωγε. τοσαῦτα μὲν περὶ τῶν θεωρικῶν. Cawkwell 1963, 58-59; Hansen 1976b, 236 (with n. 10); Carey 1992, 152: "Demosthenes' anxiety suggests that the obstacle was more than the *graphe paranomon*"; Trevett 1992, 142-143 (see next note); Kapparis 1999, 175, 176. On the protection of legislation by death penalty clauses, see n. 8 above.

12 Carey 1992, 154: "if there was a penalty clause, it probably predated 349"; Trevett 1992, 143: "if the penalty clause ever existed, it was surely in force at the time when Demosthenes showed such reluctance to introduce new legislation."

13 Hansen 1976b, 239-240, 242-243 (incl. 243: "in all likelihood the Theoric Fund got its money from an annual appropriation which in times of peace could be supplemented by any surplus"), 244, tentatively followed by Trevett 1992, 144-145 and, on this point, by Kapparis 1999, 177.

14 Cf. Dem. 3.31 and 33 (see above) and Hansen 1976b, 245: "it is those (annual) appropriations which Demosthenes attacks in the *First* and the *Third Olynthiac*."

as noted by Carey, who thus exculpated Libanius on this point.<sup>15</sup> Even more important, Hansen's considerations were based on evidence from after the reform of 339-8, which radically reorganized the Athenian financial administration, including the organization and responsibilities of the Theoric Fund.<sup>16</sup>

Carey tried to reconcile the evidence from Theomnestus about Apollodorus' punishment by a fine with Libanius' words about the death penalty by suggesting that the law mentioned by Libanius—or the “theoric laws,” according to Carey—was not the same as the law that was eventually applied to Apollodorus, thus acquitting Libanius on this point as well. According to Carey, Apollodorus was convicted and fined on procedural grounds, because Apollodorus “was allowing the Assembly to choose between contradictory legal provisions.”<sup>17</sup> Following Carey, Kapparis believed that Apollodorus tried to clarify a point of legal confusion; unlike Demosthenes, he did not attempt to change the law, but suggested an inappropriate procedure for resolving the situation.<sup>18</sup> Carey and Kapparis offered this interpretation because Apollodorus' proposal concerned diverting the budget surplus money from the Theoric Fund, while his eventual prosecution resulted from a *graphe paranomon*. They both, thus, concluded that Apollodorus was prosecuted for proposing some (unspecified) illegal measures in connection with diverting the surplus money. But it is hard to see any “contradictory legal provisions” if the law allowed Athenians to divert the surplus money to military needs in times of war, and if this was what Apollodorus suggested they should consider.<sup>19</sup>

Harris attempted to answer the question about why Apollodorus was punished by a fine instead of the death penalty in a different way. He (2006, 123)

15 On *merismos*, see Migeotte 2014, 444-447, 450. Carey 1992, 153: “At 3.33 Demosthenes suggests the use of ταῖς περιουσίαις ταῖς οἰκοὶ ταύταις (“these domestic surpluses”) for external affairs. This looks like a reference to what are called τὰ περιόντα χρήματα (“the surplus money”) in 59.4. If so, we must accept that there were legal impediments to any attempt to divert the surplus money away from the theoric fund. To this extent Libanios is right.” See nn. 4 and 5 above.

16 Hansen 1976b, 242: “This description derives from Aristotle, who was writing *ca* 325. We learn from Aeschines that οἱ ἐπὶ τὸ θεωρικόν in the middle of the century exercised the powers held by the ἀποδέκται at the time Aristotle wrote the *Athenaion Politeia*. Accordingly the Theoric Board was at the same time the board in control of the distribution of the revenue in collaboration with the Council and one of the boards that received some of the revenue. The board must have had a fair chance of securing for itself the lion's share of the appropriations and possibly supplementing this share by any surplus.” See Part 2 below.

17 Carey 1992, 154: Apollodorus “has not sought to change the law. He has not even formally recommended a single course of action. He has left the decision on the application of the law to the Assembly ... If we suppose that Apollodoros evaded the penalty clause by a procedural device, we are free to accept Libanios' statement that the penalty for any meddling with the law was death,” and 156 (the quote).

18 Kapparis 1999, 177-178, incl. 177 on Apollodorus as taking the risk of an “open *probouleuma*.” However, although the one who put forward a *probouleuma* could be prosecuted on the basis of a *graphe paranomon*, an open *probouleuma* did not make any policy change recommendations but only proposed a public debate: e.g., Hansen 1987, 67-68.

19 [Dem.] 59.4, with Harris 2006, 131 (see n. 6 above) and Harris 2013, 92 (see n. 54 below).



resolutely rejected the “spurious assistance of Libanius’ suspect explication,” thereby denying the existence of any prohibition on converting theoric money for military purposes. Harris’ arguments can be summed up as follows. On the *Olynthiacs*, he stated that (i) passages from the *First Olynthiac* and the *Third Olynthiac* show that Demosthenes “nowhere criticizes the Theoric Fund” and claims “as long as the Athenians used the Military Fund for its stated purpose, they can leave the Theoric Fund untouched. The Athenians do not have to choose between guns and butter: they can have both if they manage their finances in a sensible manner,” and (ii) we do not “need to accept the existence of Libanius’ law concerning the Theoric Fund to understand these passages.”<sup>20</sup> However, with reference to (i), although it is true that Demosthenes did not criticize the Theoric Fund, his *First Olynthiac* gave the Athenians a choice between channeling the (surplus) money to the Theoric Fund or to military needs: if the Athenians preferred to keep to the former, then, Demosthenes argued, they would have to introduce a separate war tax (*eisphora*). The same is true for the speech made by Eubulus in the course of a debate in Athens about whether the Athenians should establish peace with Philip in 347-6: he warned the Assembly that if they did not ratify the treaty, they would have to go down to the Piraeus and man the fleet, impose the *eisphora* on the wealthy, and convert the money in the Theoric Fund for military purposes.<sup>21</sup> As to (ii), “Libanius’ law” helps to explain why Demosthenes was so cautious and indirect in his *First Olynthiac*, to the extent that he even anticipated a question about whether he proposed to divert the budget surplus money designated for the Theoric Fund, which he vehemently denied, although this is precisely what he was advocating (Dem. 1.19-20; see n. 3 above).

Harris also argued that (iii) while Theomnestus insisted that Apollodorus’ proposal was in accordance with the laws, Apollodorus was fined for “passing an illegal decree,” or, as Harris reiterated on the following page, “for passing a decree about money for the Theoric Fund.” This, asserted Harris, contradicts Libanius’ information on two counts: “Libanius’ law” prohibited diverting money from the Theoric Fund, and therefore, any such move was illegal; and it established the death penalty for anyone who made this proposal, whereas Apollodorus was only punished with a fine. Harris then (iv) modified Hansen’s argument in the sense that Demosthenes’ *Olynthiacs* and Apollodorus’ proposal concerned different issues: the focus of Demosthenes’ attention was the management of the Military Fund, so that Demosthenes “argued that the money in the Military Fund would be sufficient to finance the campaign to defend

20 The *Olynthiacs*: Harris 2006, 129. The proposal of Apollodorus: 129-131.

21 Dem. 1.19-20 (see n. 3 above), giving the Athenians a choice of one of the two measures in 349, and 19.291 (καταβαίνειν εἰς Πειραιᾶ δεῖν ἤδη καὶ χρήματ’ εἰσφέρειν καὶ τὰ θεωρικὰ στρατιωτικὰ ποιεῖν), advocating the two measures together in 343. Harris 2006, 122 used the latter reference, too, as proof that there was no prohibition on diverting the money designated for the Theoric Fund.

Olynthus provided that the Athenians did not draw on it to pay for attendance at festivals,” while Apollodorus “passed a decree in the Council calling on the Assembly to decide whether the surplus in the budget should be paid into the Military Fund or the Theoric Fund.”

However, with regard to (iii), “passing an illegal decree” meant not only introducing a decree that contradicted existing laws but also a failure to abide by the established legal procedure, as we shall see in more detail below. The problem with (iv) is that Harris presented the state of Athenian finances during the early 340s in a form which did not emerge until ten years later. He (2006, 124-125) adduced the four following inscriptions as the basis of his argument that the Military Fund covered payments “for non-military purposes”:

(A) *IG II<sup>2</sup> 212* = Rhodes and Osborne 2003, no. 64 = *IG II<sup>3</sup> 298*: the grant of privileges to the Bosporan rulers Spartocus II and Perisades I and their brother Apollonius. According to the proposal moved by the Attidographer Androktion, each of the two rulers was to receive a gold crown worth one thousand drachmas at every celebration of the Great Panathenaea, and the money was to be delivered by the *apodectae*, or “receivers,” from the Military Fund (347-6 B.C.),<sup>22</sup>

(B) *IG VII 4252* = *IG II<sup>3</sup> 349* = Petrakos 1997, 200-201, no. 296: the decree (found in Oropus, in Boeotia), moved by Phanodemus, which proposed to crown the god Amphiaraus (the only Athenian decree crowning an immortal) for taking good care of the Athenians and other people who came to his temple in search of health and protection, and the money was to be delivered by the treasurer of the Military Fund; II.20-23: τὸ δὲ ἀργύριον τὸ εἰς τὸν στέφανον δοῦναι τὸν ταμίαν τῶν στρατιωτικῶν (332-1 B.C.),<sup>23</sup>

(C) *IG II<sup>2</sup> 1672* = *I.Eleusis 177*: the supervisors of the construction of a cross-wall in Eleusis received a loan from the treasurer of the Military Fund, the *apodectae*, and an unnamed banker; 39-40: καὶ τὸ προσδανεισθὲν εἰς τὸ διατεῖχισμα τὸ Ἐλευσῖνι παρὰ ταμίου [σ]τρατιωτικῶν καὶ παρ’ ἀποδεκτῶν καὶ παρὰ τοῦ τραπεζίτου κτλ. (329-8 B.C.), and

(D) *IG II<sup>2</sup> 1493*: the account of the treasurers of Athena and of the Board in charge of the *Nikai*, Processional Vessels and Canephoric Ornaments, list payments made by the treasurer of the Military Fund, in 334-3:

We have (received) the (following amount of) money in g[old] for (the construction of) the *Nik[ai]* and (for) the (Solemn) Proc[ession]—in the fifth pry[tany] of (the tribe of) [Aean- or Leon]tis from the treasurer of the Mi[litary Fund De]mades of (the deme of) P[aeonidae?] - - - -[in the sixth prytany of

22 See also Lambert 2006, 120, no. 3 = Lambert 2012, 102, no. 3.

23 See Veligianni-Terzi 1997, 114, B 12, and Scafuro 2009, 59-86. Neither of them examined the relationship between the Military Fund and the Theoric Fund.



(the tribe of) Hip]pothont[is from the treasurer of the Mi]litar[y Fund Demades of (the deme of) Paeo]nidae: [- - - in the tenth pry]tany [of (the tribe of) Ce]cropis f[rom the treasurer of the Mili]tar[y Fund Demades of (the deme of) Paeonidae: - - -].<sup>24</sup>

Harris used these inscriptions to reinterpret the *Third Olynthiac* in the sense that “Demosthenes is not attacking the Theoric Fund for depriving Athens of money for military expeditions. Rather, he is criticizing the Assembly for drawing on the Military Fund to defray nonmilitary activities,” thus switching from the topic of surplus money to the topics of money in the Funds and of these Funds’ administration.<sup>25</sup> These inscriptions do not overturn the meaning of what Demosthenes was saying in 349, however: his *Third Olynthiac* urged Athenians to use “abundant domestic surplus money for the attainment of advantages abroad,” that is for military purposes, by diverting this surplus money from the Theoric Fund (Dem. 3.31 and 33; see above). Nor do these inscriptions support Harris’ view about the status of the Theoric Fund in the 340s. The first of them stands alone because crowns for the two rulers were to be paid for from the fund allocated for expenditures on inscribing decrees in the future; this was the only time that the money was to come from the Military Fund.<sup>26</sup> And the choice of the fund was entirely appropriate since the decree concerned foreign affairs, for which the Military Fund was the source of finance. B and D also dealt, directly or indirectly, with foreign affairs and/or military activities, for which the Mili-

24 IG II<sup>2</sup> 1493.7-17, as restored by Mitchel 1962, 218 (= SEG 21.552), vv. 7-21, with his correction in *AJA* 70 (1966), 66. Having offered to restore the name of Demades in this place, Mitchel 1962, 221-222 (with n. 24) also pointed out that Demades’ responsibilities as the treasurer of the Military Fund “went beyond the simple disbursement of funds,” and included “non-military expenditure.” Harris 2006, 125 n. 7 accepted Mitchel’s restoration of the name of Demades in that text, and paid attention to the evidence about payments made “for non-military purpose.”

25 Harris 2006, 125 (the quote), and 125-126: “Both the practice of drawing on the Military Fund for nonmilitary expenditures and these exemptions were established and protected by laws that Demosthenes wants to abolish” (in the *Third Olynthiac*), 127: “Demosthenes also criticizes the practice of raiding the Military Fund to pay for dramatic festivals in the *First Olynthiac* (Dem. 1.19-20),” 129: Demosthenes’ *Olynthiacs* are critical of the Athenians because they “spend money from the Military Fund for festivals (εἰς τὰς ἐορτάς).” Thus Harris was not speaking about the surplus money but about the (administration of the) Funds; he was followed by MacDowell 2009, 233-234: “Evidently there was a law authorizing transfer of money from the military fund to the theoric fund. Demosthenes wants the money to be retained in (or transferred back) to the military fund.” Cf. Dem. 3.31 (see above).

26 IG II<sup>2</sup> 212 = Tod 167 = IG II<sup>3</sup> 298.39-44: τὸ δὲ ἀργύριον διδόναι τοῖς ἀθλοθέταις εἰς τοὺς στεφάνους τὸν τοῦ δήμου ταμίαν ἐκ τῶν εἰς τὰ κατὰ ψηφίσματα τῷ δήμῳ μερ[ι]ζομένων· τὸ δὲ νῦν εἶναι παραδοῦναι τοὺς ἀποδέκτας τὸ εἰς τοὺς στεφάνους ἐκ τῶν στρατιωτικῶν χρημάτων, with Brun 1983, 172 n. 2. Cf. Harris 2006, 124: Androtion proposed that “the two rulers each receive a gold crown worth one thousand drachmai ... every four years. The money from (sic) these crowns was to be paid by the Apodektai from the Military Fund. This was not a trivial sum: it was enough to purchase a theater ticket costing two obols for each of six thousand Athenians.”

tary Fund was the obvious source of financing. Most important, however, B, C, and D belong to the 330s-320s, which was after a profound reorganization of Athens' financial administration (see below). Harris passed over this reorganization, insisting that Demosthenes' attitude toward the Theoric Fund remained the same throughout the 340s and 330s. As part of this argument, he interpreted the *Olynthiacs* (349) as being as positive on the Theoric Fund as the *Fourth Philippic* (generally dated to the very end of the 340s), and pointed out that Demosthenes himself became a theoric controller in the early 330s.<sup>27</sup>

## 2. Athenian finances in the 330s

The biggest challenge to these considerations is not whether the *Fourth Philippic* was genuinely Demosthenes' work, or a draft of a speech that was never delivered, or a forgery.<sup>28</sup> If the authenticity of the *Fourth Philippic* is accepted, as it probably should be, then this speech reflects a marked change in Demosthenes' attitude toward the Theoric Fund. While his *Olynthiacs* lamented the need to transfer the surplus money to the Theoric Fund instead of channeling it for military purposes, the *Fourth Philippic* praised the Theoric Fund as something that united Athenians and joined them together (10.35-45). Commentators have explained this new attitude by the need to bring the Athenians together for what looked like an imminent war against Philip (the *Fourth Philippic* praised the Theoric Fund for strengthening the entire city collectively, while stressing the importance of trust among all Athenians), and by Athens' improved financial situation, as her revenues increased several times over the 340s.<sup>29</sup>

The view that Demosthenes' attitude toward the Theoric Fund remained the same in the 340s and the 330s neglects the reorganization of Athens' financial

27 Cf. Harris 2006, 123: "scholars have assumed that Demosthenes was able to abolish the law [i.e., on the prohibition of the transfer of money from the Theoric Fund] sometime in the late 340s," and "if Demosthenes was so hostile to the Theoric Fund, why did he later not only praise it in his *Fourth Philippic* (10.35-42) but also become the supervisor of the fund sometime early in the next decade?" Cf. Worthington 2013, 227 (and n. 73), who appears to disagree with Harris' view that Demosthenes retained the same attitude toward the Theoric Fund in the *Fourth Philippic* as in his *Olynthiacs*.

28 Recent scholarship has favored the authenticity of this speech: e.g., Hajdú 2002, 44-49; Trevett 2011, 177-179; Worthington 2013, 225. Yet not all support its genuineness: for such views, see, e.g., references by D. MacDowell, in *CR* 53 (2003), 301 (who acknowledged the genuineness of this text) and Wooten 2013, 350 (with n. 2).

29 Dem. 10.36, 44-45, with Glotz 1932, 386, 395-397; Brun 1983, 181; Hajdú 2002, 292-297; Trevett 2011, 180-181; Worthington 2013, 225, 227. Revenues: Dem. 10.37-38, with bibliography in Leppin 1995, 558 n. 9; cf. MacDowell 2009, 356: "Probably because of a recent increase in Athenian revenues from other sources, as well as a realization that the citizens would never agree to forgo their festival doles, [Demosthenes] no longer suggests limiting the payments. Instead he expresses concern that antipathy or jealousy has arisen between the wealthy and the poor classes of the citizenry in this connection."

administration in the early 330s. Philochorus (*fl.* early 3rd cent. B.C.) and Sopater (*fl.* 4th cent. A.D.) say that, after the war between Philip and Athens finally broke out in the archonship of Lysimachides (339-8), the People passed a decree in support of Demosthenes' proposal to channel all available money to military purposes. According to the most detailed of these accounts, by Philochorus,

the people, after listening to the letter and to the exhortations of Demosthenes, who advocated war and framed the necessary resolutions, passed a resolution to demolish the stele erected to record the treaty of peace and alliance with Philip, and further to man a fleet and in every other way to prosecute the war energetically ... Lysimachides of the deme Acharnae. Under this archon the Athenians, in consequence of the war against Philip, deferred the construction of the dockyards and the arsenal (ἐπὶ τούτου τὰ μὲν ἔργα τὰ περὶ τοὺς νεωσοίκους καὶ τὴν σκευοθήκην ἀνεβάλλοντο διὰ τὸν πόλεμον τὸν πρὸς Φίλιππον). They resolved, on Demosthenes' motion, that all funds should be devoted to military purposes (τὰ δὲ χρήματα ἐψηφίσαντο πάντ' εἶναι στρατιωτικά Δημοσθένους γράψαντος).<sup>30</sup>

The Athenians, therefore, decreed that they would channel all their money into military purposes after they declared war against Philip in 339. Aeschines made a reference to what the financial administration of Athens was like in the time shortly after the events mentioned by Philochorus and Sopater. In 330, when he retrospectively accused Ctesiphon of wrongdoing because of his proposal to crown Demosthenes in 336, Aeschines (3.25-26) described the situation that existed when Demosthenes became a theoric controller—soon after the war between Athens and Philip broke out—as if Demosthenes “was holding all offices in Athens rolled into one”:

... because of your confidence in Eubulus, those elected theoric controllers performed the accountant's office (before Hegemon's law was passed) and the office of the receivers, and the office in charge of the dockyards, and were constructing an arsenal; they were also Commissioners for Roads and had charge of virtually the whole of the city's government (οἱ ἐπὶ τὸ θεωρικὸν κεχειροτονημένοι ἦρχον μὲν, πρὶν ἢ τὸν Ἡγήμονος νόμον γενέσθαι, τὴν τοῦ ἀντιγραφέως ἀρχήν, ἦρχον δὲ τὴν τῶν ἀποδεκτῶν, καὶ νεωρίων ἦρχον, καὶ σκευοθήκην ὠκοδόμουν, ἦσαν δὲ καὶ ὁδοποιοί, καὶ σχεδὸν τὴν ὅλην διοίκησιν εἶχον τῆς πόλεως). My aim in saying this is not to accuse or criticize them but

30 *FGrH* 328 (Philochor.), F 56a = D.H. *Amm.* 1.11, and Sopater, in Walz 1833, 181.20-21: τοῦ περὶ Χαιρώνειαν πολέμου γενομένου γράφει Δημοσθένης τὰ θεωρικά εἶναι στρατιωτικά, with Glotz 1932, 385-386; Buchanan 1962, 71; Cawkwell 1963, 61; Hansen 1976b, 237, 241; Leppin 1995, 565; Harris 2006, 122. Cf. Mader 2005, 11; Rhodes 2013, 219-220, who dated this change to the time of the Fourth Sacred war, and asserted that it had a temporary character (on this, see n. 56 below). See also Schol. Aeschin. 3.24 (Dilts, 110): τὰ δὲ χρήματα τὰ θεωρικά εἰς στρατιωτικὸν μεταβάλλειν ἔπεισε πρῶτος Δημοσθένης, who used another verb with μετα— (see n. 10 above).

to prove to you that, though the legislator does not permit a man who is subject to audit for a single office, however insignificant, to be crowned until he presents his account and submits to audit, Ctesiphon had no hesitation in proposing to crown Demosthenes when he was holding all offices in Athens rolled into one (τὸν συλλήβδην ἀπάσας τὰς Ἀθήνησιν ἀρχὰς ἄρχοντα).

What Aeschines was saying was that not even the holder of a single minor office could be crowned before having an audit of his office, whereas Demosthenes was to be crowned without submitting any report for holding what was essentially “all offices in Athens rolled into one.” Aeschines’ words have been interpreted as reflecting the status of theoric controllers at the time this office was established, or reorganized, by Eubulus in mid-fourth century.<sup>31</sup> This, Aeschines implied, was the situation that existed when Demosthenes occupied that office. However, things had changed by the time Aeschines made his speech against Ctesiphon. According to Philochorus, the People “deferred the construction of the dockyards and the arsenal” in the archonship of Lysimachides (339-8), that is to say, after the Athenians declared war on Philip but before the battle of Chaeronea. This is surprising if the Athenians had just declared war, and especially if, as Philochorus says a little below, they “resolved, on Demosthenes’ motion, that all funds should be devoted to military purposes.” Philochorus’ words evidently reflect that the responsibilities of theoric controllers over dockyards and the (construction of the) arsenal, which they received from Eubulus (according to Aeschines), had been limited at that time. The “Hegemon’s law,” which was mentioned by Aeschines, likewise deprived theoric controllers of important responsibilities:<sup>32</sup> the accountant’s office reappeared in one of the Attic inscriptions which has been dated to the mid-330s or, in a recent publication, to about 337.<sup>33</sup> A further limit on the activity of theoric controllers was imposed by the introduction of the office of ὁ ἐπὶ τῇ διοικήσει at some point during the 330s, which was occupied by Lycurgus. Whether this office was established in 338 or at a later date,<sup>34</sup> it was in charge of the entire Athenian financial administration.<sup>35</sup>

31 E.g., Rhodes 1981, 516, and 1994, 569.

32 On this Hegemon, see Osborne and Byrne 1994, 200, s.v. Ἡγήμων (9). On “Hegemon’s law,” about which we know very little, as dating to after Demosthenes’ tenure in the office of the theoric controller and aiming to undermine his influence, see Buchanan 1962, 72-73 (dating the introduction of this law to the time by 335-4); Leppin 1995, 559-560, 565; Rhodes 1994, 569 (see n. 59 below); Carey 2000, 174 n. 2. Cf. Develin 1989, 421 (no. xxxii): “before 330.” On the length of Demosthenes’ tenure, see Appendix.

33 *IG II<sup>3</sup>* 429.22 (this dating by S. D. Lambert), with Buchanan 1962, 73 (“335/4 B.C.”).

34 338-7: Mitchel 1970, 12, with n. 34: “Lykourgos’ period of influence extended from 338/7 to 334/3, from 334/3 to 330/29, from 330/29 to 326/5”; Wirth 1997, 208 (and n. 64 with bibliography); Engels 2008, 20 (338-324 B.C.). A later date: Rhodes 1981, 516; cf. Cawkwell 2012b, 872, who avoided mentioning the date.

35 Mitchel 1970, 28-29: Lycurgus “managed to have friends elected to succeed him, so that he actually administered the city’s finances for a period of twelve years, 338-326”; Rhodes

Philochorus might have been speaking in general terms when he referred to “all funds” being designated for military purposes in 339-8. However, our evidence shows that the Theoric Fund was fundamentally transformed in the early 330s. According to de Ste. Croix (1964, 190-191), Aeschines’ description of the all-powerful status of Demosthenes as a theoric controller in the period between 339 and the mid-330s turns out to have been a piece of rhetoric. Regardless of whether the Military Fund and the Theoric Fund were just two different names for what was in fact the same fund in 339, as Brun (1983, 173) has tentatively suggested, since all monies were put together, any entertainment expense at that time would, indeed, have cut directly into military expenditures. This situation might have factored into Demosthenes’ election as a theoric controller, in addition to his acknowledgment that the theoric money was important for keeping peace and trust among Athenians in time of war. It might also cast additional light on the well-known story from Plutarch:

It is no less good to divert attention to other needs, as Demades did when he was in charge of the state revenues (ὅτε τὰς προσόδους εἶχεν ὕφ’ ἑαυτῷ τῆς πόλεως). For when some were urging to send out triremes to aid those who were in revolt against Alexander and bade that he allocate funds, “You have,” he said, “funds available, for I have made preparations for the Pitcher-Feast so that each of you receives a half-mina. If you wish to use it for that purpose, finance the festival with your own money.” And in this way, since they abandoned sending the expedition in order not to lose the distribution of money, he deprived Alexander of a charge against the Athenians.

The earlier-mentioned inscription containing the account of the treasurers of Athena and of the Board in charge of the *Nikai*, Processional Vessels and Cane-phoric Ornaments, dated by the archonship of Ctesicles to 334-3, presented Demades as the treasurer of the Military Fund that covered military expenses for the Athenians.<sup>36</sup> Demades’ famous words have traditionally been linked to the Spartan revolt of Agis III against Macedonian rule over Greece in 331-330.<sup>37</sup> Since the *Ath. Pol.* 43.1 points out that the treasurer of the Military Fund served “from Panathenaea to Panathenaea”—which, evidently, means the quadrennial celebration, or the Greater Panathenaea—Demades is thought to have held his

1981, 516: “he controlled Athenian finance, at first in person and subsequently through his friends,” although inclined to a later date as the beginning moment of this twelve-year-long period (see preceding note), and evidently accepting the view that Lycurgus’ status as ὁ ἐπὶ τῇ διοικήσει could not be established by *nomos* but by *psephisma*, and, hence, it was passed over in the *Athenian Politeia*. On the diverse meaning of the word *dioikesis*, which could designate both a separate fund and the overall financial, and revenue, administration—which embraced various funds—as well as several other meanings: Fawcett 2006, 154-156.

36 Plut. *Praec. ger. reip.* 818ef. *IG* II<sup>2</sup> 1493.7-17 (see n. 24 above).

37 On dating Agis’ revolt to 331-330, see Badian 1994, 272-277 (repr. Badian 2012, 338-364) with Bosworth 2012, 39, who tentatively put its beginning in the summer of 331. This link: e.g., Mitchel 1970, 14 n. 40, 16-17; Brun 2000, 87, 134 (with certain reservations).

post from the summer of 334 until the summer of 331 (Mitchel, Brun) or 330 (Wilamowitz, Develin, Habicht).<sup>38</sup> However, while some agree that Demades occupied the position of the treasurer of the Military Fund during this period, others have identified his post as that of a commissioner of the Theoric Fund, since he was in charge of the money designated for a religious festival.<sup>39</sup> If accepted at face value, this evidence might reflect the system of putting all the money together, which was introduced in 339-8. Even if this system continued into the late 330s, as Plutarch's story about Demades might suggest, the *Ath. Pol.* 43.1 listed the treasurer of the Military Fund and the controllers of the Theoric Fund side-by-side in the 320s.

Although our knowledge about the reorganization of Athens' financial administration in 339-338 and its subsequent modifications is incomplete, it is not unreasonable to suggest that parts of this new system remained in place for many years: the Military Fund took on additional responsibilities, while the Theoric Fund disappeared around the late 320s. The situation surrounding Athens' financial administration, and with the Theoric Fund in particular, was different after 339-8 compared to what it had been in the early 340s when Demosthenes and Apollodorus made proposals about transferring the surplus money from the Theoric Fund to the Military Fund. The evidence from the period after 339-8 cannot be used to illustrate the relationship between the two Funds in the early 340s.

### 3. *Apollodorus' crime and punishment*

The reorganization of Athens' financial system, and, accordingly, the change in relationship between the Theoric Fund and the Military Fund, as well as in Demosthenes' attitude to theoric money, show that the evidence from the 330s offers no support for rejecting the view that there was indeed a prohibition on diverting surplus money from the Theoric Fund in the 340s. We thus return to square one. The question remains about why, although convicted by Stephanus ([Dem.] 59.5) on the charge of having made an illegal proposal (*graphe paranomon*), Apollodorus was punished not with death (as one would expect on the basis of Libanius' information) but with a fine (as follows from Theonnestus).

Is the issue of the prohibition on transferring the surplus money away from the Theoric Fund "ultimately insoluble"?<sup>40</sup> Carey (1992, 156) suggested the

38 Wilamowitz-Moellendorf 1893, 208 n. 36; Develin 1989, 380, 390; Habicht 1989, 84, 87 (September-October 334 to September-October 330); Mitchel 1962, 219-221; cf. Mitchel 1970, 16 (from 334-333 to 330-329); Brun 2000, 87, 139.

39 The treasurer of the Military Fund: e.g., Marzi 1995, 642-643 n. 1. A commissioner of the Theoric Fund: e.g., Lhardy 1834, 30; Beloch 1884, 249; De Falco 1954, 23.

40 E.g., Trevett 1992, 145: "the problems of the Theoric Fund remain ultimately insoluble"; see MacDowell 2009, 234 (see n. 9 above); Kapparis 1999, 176: "the puzzle remains unresolved."



possibility of true legal confusion over how the surplus budget money should be handled: “One consistent feature in all attempts to sort out existing legislation and scrutinize new legislation is the empanelling of *nomothetai* (“lawmakers”). Demosthenes in the *Third Olynthiac* proposed such a body of *nomothetai* to sort out the theoric laws. However, according to the reconstruction suggested above, Apollodorus simply proposed that the Assembly should choose by a vote which of the conflicting laws to apply. That was procedurally irregular, and this irregularity was perhaps the main charge in the *graphe paranomon*.” He was seconded by Kapparis (1999, 178), who observed that, although directing the surplus of the administration in the Military Fund was lawful in the time of war, “in practice the enforcement of the law was a difficult task because those opposed to this transfer were able to cite another law stating that the surplus should be directed to the theoric fund, yet failing to mention that this should only happen in time of peace.” However, Demosthenes specifically advised the Athenians to establish *nomothetai* to repeal those laws that were harming Athenian interests “at present” (3.10: ἐν δὲ τούτοις τοῖς νομοθέταις μὴ θῆσθε νόμον μηδένα (εἰσὶ γὰρ ὑμῖν ἱκανοί), ἀλλὰ τοὺς εἰς τὸ παρὸν βλάπτοντας ὑμᾶς λύσατε), including the “laws” that distributed military funds as theoric payments to those who stayed home (3.11: οἱ μὲν στρατιωτικὰ τοῖς οἴκοι μένουσι διανέμουσι θεωρικά). For Demosthenes, this was another way to say that the Theoric Fund, i.e. not just the surplus money, would better be used for military purposes. Demosthenes made no reference to conflicting laws concerning the Theoric Fund, and there were none: Athens was not in a state of war. Either the law prohibiting the diversion of the surplus money from the Theoric Fund in a time of peace needed to be repealed by the *nomothetai* (Demosthenes), or the people should make a special decision on the budget surplus money (Apollodorus), or a war tax, *eisphora* (Dem. 1.19-20; see n. 3 above), needed to be introduced.

Others have therefore suggested that Apollodorus’ proposal to bring the matter to the decision of the People did not contradict any existing laws.<sup>41</sup> Submitting an open *probouleuma* was an option, like the use of the *nomothetai* suggested by Demosthenes. However, the proposal could also be acknowledged as unconstitutional not only because it contradicted existing laws but on procedural grounds. It was unconstitutional, for example, to bring forward a decree before the People without prior approval by the Council, and Theomnestus does not fail to mention that Apollodorus submitted his decree to the People in the form of a *probouleuma*.<sup>42</sup> According to him, Stephanus succeeded in hav-

41 E.g., Harris 2006, 131 (see n. 6 above); Harris 2013, 92 (see n. 54 below); Trevett 1992, 144: if Apollodorus succeeded in circumventing the prohibition on diverting the budget surplus money from the Theoric Fund, “we could understand why Stephanos was reduced to prosecuting him on [a] technicality.”

42 [Dem.] 59.4-5. See Hansen 1974, 29-30, no. 4; 32, no. 12; 37, no. 29, with Yunis 1988, 364 n. 12.

ing Apollodorus' proposal acknowledged as unconstitutional, while adducing "false witnesses for the purpose of slander (ἐπὶ διαβολῇ)" and making many accusations that were not relevant to the actual indictment. "Slander" could be used as a false main charge or as a supplementary allegation, as noted by Carey, who was inclined toward the latter interpretation.<sup>43</sup> Another potential reason for rejecting the proposal as unconstitutional was the unconstitutional status of its author. Sauppe revised [Dem.] 59.5 by inserting the phrase ὥς ὥφλε τῷ δημοσίῳ ἐκ πέντε καὶ εἴκοσι ἐτῶν, which he moved from 59.9 and put in square brackets.<sup>44</sup> Its presence in 59.9 made the structure of the text "impossible."<sup>45</sup> Sauppe's textual adjustment was accepted by many, who often dropped the square brackets. The insertion of this phrase in 59.5 meant that Apollodorus was (allegedly) a state debtor, and, thus, he had no right to make any proposals to the People. This would have explained his punishment on the charge of making an illegal proposal on procedural grounds.<sup>46</sup> Public debtors were punished by *atimia*,<sup>47</sup> which entailed the loss of certain civic rights, such as the right of legal initiative. Diodorus (18.18.1-2) illustrates this consequence of *atimia* with reference to an episode from the history of Athens in the late fourth century:

Antipater led all his forces against the Athenians. The People, bereft of the aid of their allies, were in great perplexity. All turned to Demades and shouted that he must be sent as envoy to Antipater to sue for peace; but, although he was called on by name, he did not respond by giving a counsel (οὗτος μὲν καλούμενος σύμβουλος οὐχ ὑπήκουσεν). He had been convicted three times of introducing illegal proposals, and for this reason he had been made *atimos* and prevented by the laws from making proposals (ἦν γὰρ τρις ἡλώκως παρανόμων καὶ διὰ τοῦτο γεγονώς ἄτιμος καὶ κωλυόμενος ὑπὸ τῶν νόμων συμβουλεύειν). Yet, on being restored to full rights by the People (ἀπολαβὼν δὲ τὴν ἐπιτιμίαν ὑπὸ τοῦ δήμου), he was at once sent as envoy along with Phocion and some others.

This story shows that the Athenians considered any proposal put forward by an *atimos* to be illegal. Demosthenes' speech against Androtion describes

43 [Dem.] 59.5 (see next note). Carey 1992, 155.

44 Baiter and Sauppe 1839-1843, 918-919: γραψάμενος γὰρ παρανόμων τὸ ψήφισμα Στέφανος οὐτοσί καὶ εἰσελθὼν εἰς τὸ δικαστήριον, ἐπὶ διαβολῇ ψευδεῖς μάρτυρας παρασχόμενος [, ὥς ὥφλε τῷ δημοσίῳ ἐκ πέντε καὶ εἴκοσιν ἐτῶν,] καὶ ἔξω τῆς γραφῆς πολλὰ κατηγορῶν εἶλε τὸ ψήφισμα.

45 On the background and history of Sauppe's textual change, see Kapparis 1995, 19-20.

46 Carey 1992, 87: "the transposition, which was made by Sauppe, is probably correct ... it is not clear whether this was the sole, the main or a subsidiary ground for Stephanos' prosecution."

47 Hansen 1974, 37, no. 29; 37-39, no. 30, and Hunter 2000, 21 n. 2 (with further bibliography). Hansen 1982, 113-120 suggested that *atimia* could also be imposed as a consequence of private debts, noting, however, that in (at least some) such cases, the debtor also had to pay a fine to the state treasury, which turned him into a public debtor.

the situation in which a *graphe paranomon* could be filed both on procedural grounds (Demosthenes alleged that the decree proposed by Androtion was *aprobouleutos*) and because of the proposer's status as an *atimos*. Demosthenes asserted that Androtion had both personal *atimia* as a prostitute, and hereditary *atimia* as a public debtor. Even if these were only allegations, Demosthenes' words pointed to the actual regulations in Athenian laws.<sup>48</sup>

The criticism of those who did not share Sauppe's view has focused on his textual adjustment and, accordingly, the claim that Apollodorus was a state debtor, and that he was a state debtor for twenty-five years. Carey's most recent edition of speeches from the Demosthenic corpus abandoned the transposition suggested by Sauppe, and moved ὥς ὧφλε τῷ δημοσίῳ ἐκ πέντε καὶ εἴκοσι ἐτῶν back to 59.9, while putting it in curly braces, which hints at it being an interpolation.<sup>49</sup> Apollodorus' status as a state debtor has been doubted because of his wealth, active participation in Athenian politics and litigation (his opponents had enough time to unearth this disability), and his membership in the city council, for which he had to pass a scrutiny that would have revealed his debt to the state ([Dem.] 59.3). In addition, in 373-2—twenty-five years prior to the trial, which is generally dated to 348—Apollodorus was 21, with his property still controlled by his father Pasio.<sup>50</sup> This, too, speaks against his twenty-five-year-long *atimia*. A fine was a typical punishment for illegal proposals, and the suggested fines were really high, indicating that Apollodorus' case was rather typical.<sup>51</sup> Theomnestus insisted that Stephanus strove to impose the fine of fifteen talents on Apollodorus so that Apollodorus and his descendants would become *atimoi*.<sup>52</sup> This also implies that Apollodorus was not an *atimos* and, therefore, was not a state debtor at either the time when he made his proposal or at the time of the trial. In spite of these considerations,<sup>53</sup> the

48 The *aprobouleutos* decree: Dem. 22.5-7; pace Yunis 1988, 364-365 n. 12. Personal *atimia*: Dem. 22.24, 29-32, 73. Hereditary *atimia*: 22.33-34.

49 For this view, see also Kapparis 1995, 21.

50 Carey 1992, 155; Kapparis 1995, 20.

51 See fines of ten talents (Dem. 21.182: two cases) and five talents (Dem. 25.67), and suggested fines of a hundred talents (Aeschin. 2.14) and ten talents (Dem. 58.43. This amount was subsequently doubled for non-payment; see a discussion by Hunter 2000, 25).

52 [Dem.] 59.6: καὶ τοῦτο μὲν εἰ αὐτῷ ἐδόκει διαπράξασθαι, οὐ χαλεπῶς φέρομεν· ἀλλ' ἐπειδὴ περὶ τοῦ τιμῆματος ἐλάβανον τὴν ψήφον οἱ δικασταί, δεομένων ἡμῶν συγχωρῆσαι οὐκ ἠθέλεν, ἀλλὰ πεντεκαίδεκα ταλάντων ἐτιμᾶτο, ἵνα ἀτιμώσειεν αὐτὸν καὶ παῖδας τοῦς ἐκείνου.

53 Kapparis 1995, 20 also added that "the appropriate procedure against ἄτιμοι who participated in politics was ἐνδειξις not γραφή παρανόμων." One of the two references he adduced in support of this statement proves to be of no help for this case: Hansen 1974, 34 (no. 18) discussed this episode as an example of a *graphe paranomon*, with reference to Apollodorus as having been attacked "for being a debtor to the state and, consequently, *atimos*," while Hansen 1976a did not adduce the evidence about Apollodorus. But see Lipsius 1905-1915, 331-332; MacDowell 1978, 74-75, 165; Hunter 2000, 27, 29; Phillips 2013, 41-42. The fact that Theomnestus did not mention *endeixis* does not by itself prove that Apollodorus was not an *atimos*: Theomnestus did not have to speak in legal terms, the prosecutor could have

view that Apollodorus was prosecuted, and that his proposal was overturned as illegal because of his status as a state debtor, lingers on.<sup>54</sup>

Apollodorus never actually proposed spending the surplus money designated for the Theoric Fund for military purposes; he only proposed having a vote on holding a public debate on this topic. Stephanus' need to use false witnesses at the trial suggests that Apollodorus' proposal did not go directly against existing laws. Regardless of exactly what procedural grounds Stephanus used for indicting Apollodorus, the evidence for Apollodorus' proposal turns out to be irrelevant to the issue of whether there was a prohibition on diverting the money designated for the Theoric Fund. Demosthenes' caution in 349 implies that this prohibition was in place before Apollodorus made his proposal. The People could certainly lift it if they wished, just like they could lift any legal restriction; and the tense situation of 349-348 offered a valid justification for lifting existing restrictions. This explains why Apollodorus called for a special vote of the People (διαχειροτονῆσαι τὸν δῆμον), why his proposal was supported by the Assembly, and why it was only blocked on some unspecified technicality. Eubulus then probably reinforced the prohibition against transferring surplus money away from the Theoric Fund under penalty of death, which might explain the lack of evidence for such attempts for the rest of the 340s. But what Eubulus was saying to the People was that they could lift the legal restriction and convert the money in the Theoric Fund to military purposes if they wished, although he advised them that what he claimed was a better course of action.<sup>55</sup> The outbreak of Athens' war against Philip, however, not only removed the prohibition on diverting surplus money designated for the Theoric Fund, but also – as far as our evidence allows us to conclude – merged Athenian financial resources in 339-8. There is no evidence to support the view that the prohibition on diverting surplus money designated for the Theoric Fund was ever introduced again before we stop hearing about this Fund altogether in the late 320s.<sup>56</sup> This view probably relies on evidence for the expansion of Athens' program of

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had a choice of the legal action, or/and different legal actions pertaining to different aspects of the same situation: an *endeixis* concerned the status of the person, while the indictment of a *graphe paranomon* reflected the illegal nature of that person's proposal; cf. Dem. 22.24-34 on Androtion's proposal as unconstitutional because of his status as an *atimos*, without any reference to *endeixis*.

- 54 Harris 2013, 92: Apollodorus "passed a decree to have the surplus in the budget paid into the Military Fund (sic). His motion was perfectly legal, but Stephanus, son of Antidorides, charged him with proposing an illegal decree ([D.] 59.3-6), possibly on the grounds that he was a public debtor, and won a conviction."
- 55 This power of the People: Migeotte 2014, 41-42 (with examples from different cities), 446 (on restrictions imposed by law). Schol. Dem. 1.1 and 1.19, and Dem. 19.291 (see nn. 10 and 21 above, respectively).
- 56 See Rhodes 1994, 220: "presumably after Chaeronea and Philip's settlement surpluses reverted back to the theoric fund," who offered no evidence in support of this view; *pace* Mitchell 1970, 31: "The Festival Board did not after Chaeroneia recover the important functions it had performed in the days of Euboulos."

festivals after the battle of Chaeronea (Pritchard 2015, 15). However, any direct evidence for this prohibition at that time is lacking, while a triple increase in Athens' profits during the so-called Lycurgan administration, along with the continuing peace with Macedonia, made the choice between military and entertainment expenditure less pressing.<sup>57</sup> This might explain why, in responding to calls for organizing a military expedition later in the 330s, Demades did not argue with reference to the corresponding prohibition but by reminding Athenians that this step would deprive them of their entertainment.<sup>58</sup> While we cannot absolutely rely on this late evidence of a rhetorical nature, it still needs to be taken into consideration. The lack of this prohibition, the expanded responsibilities of the Military Fund, and the growth of Athens' revenues in the 330s could have contributed to the eventual decline and disappearance of the Theoric Fund in the 320s.

### *Conclusion*

This article reconsiders ancient evidence and modern theories concerning the Theoric Fund in general, and the question about whether there existed a law prohibiting the diversion of the surplus budget money designated for this Fund to other purposes. According to Libanius, this prohibition was enforced by the death penalty. It is argued here that Libanius' information cannot simply be rejected by adducing the evidence from the 330s and 320s, since the Fund, as well as the overall Athenian financial administration, were reorganized in the early 330s. This article also argues that there is no need to reconcile Libanius' information with the evidence about the proposal to have a public vote on diverting the surplus budget money designated for that Fund to military purposes, which was moved by Apollodorus, who was then prosecuted on the basis of a *graphe paranomon* and fined in 348. Apollodorus was fined for bringing an illegal proposal, not on substantive grounds – because his proposed decree contradicted existing legislation – but on procedural grounds in the form of a technicality. There does not seem to be any definitive evidence that would undermine the existence of such a prohibition for at least some time in the 340s, while its existence is positively supported by Demosthenes' *Olynthiacs*.

### *Appendix. Demosthenes as a theoric controller*

While Aeschines' reference leaves no doubt that Demosthenes occupied the office of a theoric controller at some time after the battle of Chaeronea, a debate

57 [Plut.] *X Or.* 7, 841B and 842F, with Burke 1985, 251-252, 260; Engels 2008, 21.

58 Plut. *Praec. ger. reip.* 818ef (see n. 36 above).

has waged on two fronts: whether Demosthenes was the only person to hold this office (or, in other words, whether this was a single-man or a collective office), and when exactly he held it (and, more specifically, whether this was a one-year or a four-year tenure). We cannot move on the former question beyond restating that while an inscription from 343-2 mentioned one person in charge of the Theoric Fund, the *Athenian Politeia* showed that the Fund was ruled by a board in the 320s. When and why this change took place is unknown. It is tempting to link it to the reorganization of Athens' financial administration in the early 330s. However, Aeschines' reference to "theoric controllers," quoted above, can be interpreted as pointing to either a board or to individual office-holders in succession; any firm, precise indication is lacking.<sup>59</sup>

The view that Demosthenes occupied this office in 337-6 is based on the evidence that Ctesiphon's proposal to crown Demosthenes, who had not yet submitted an account of his office, dated to 336; it includes the acknowledgment that this was a year-long position,<sup>60</sup> as well as the view that Demosthenes' tenure was soon to expire. But if the term of theoric controllers lasted four years, from one "greater Panathenaea" to the next, as stated in the *Athenian Politeia*, and if Demosthenes had not yet submitted his official report in 336, then he must have assumed this position at some time before 337.<sup>61</sup> Here, too, the *Athenian Politeia* might not have reflected the original system but one that had only been established recently. When was this arrangement put in place? The four-year term of the office of theoric controllers should have been connected with the four-year term of ὁ ἐπὶ τῇ διοικήσει, who was in charge of Athens' financial administration. Mitchel, and others after him, put the beginning of the first of the three four-year-long terms, which made up the twelve-year long period of the "Lycurgan administration," in 338-7, while others have suggested a later date.<sup>62</sup> In the former scenario, if the battle of Chaeronea happened in early August,<sup>63</sup> and if the greater Panathenaea was celebrated on the third day from the end of Hecatombaeon (Proc. on Plat. *Tim.* 1.26), or around mid-August, of that same year, then Demosthenes could have assumed the office of theoric controller after the battle. However, even if this was the case (which depends on the date of the battle of Chaeronea, and on the date of the new moon in July-

59 IG II<sup>2</sup> 223c.5-6 = *Agora* 15, 34c.5-6 = IG II<sup>3</sup> 306c.38-39. Arist. *Ath. Pol.* 43.1. Aeschin. 3.25-26. Cf. Rhodes 1994, 569, who dated the law of Hegemon, the introduction of the board of theoric controllers, and of their four-year term to "soon after" the tenure of Demosthenes, and Csapo and Wilson 2014, 394 (with n. 10), who tentatively upheld the view that the board was established at "some time in the 340s."

60 de Ste. Croix 1964, 190 ("337/6-336/5"); Rhodes 1994, 569; Wirth 1999, 71-72 n. 197 (with some reservations); Worthington 2013, 272, 296.

61 The four-year term: Arist. *Ath. Pol.* 43.1, with, e.g., Develin 1984, 133-138.

62 See n. 34 above. Mitchel 1970, 28-29, implying that Demosthenes "was elected as one of the ten Directors of the Festival Fund" at the same time and for the same term as when Lycurgus became ὁ ἐπὶ τῇ διοικήσει in 338.

63 Wirth 1997, 191: August 8; Worthington 2013, 250: "August 1 or 4."



August 338), the election would still have taken place before August, which was during the archonship of Lysimachides, when the Athenians reorganized their overall financial administration, including the Theoric Fund, as we read from Philochorus and Sopater.

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